Annuities Sales to Seniors
For consideration at Pre-notice Public Discussions
August 14, 2007

Version A

California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Article 12.6
~~Life Insurance Yield Comparison Index and Net Payment Cost Comparison Index~~
Annuities Sales to Seniors:

Section 2546. ~~Authority~~ Duty of Good Faith and Fair Dealing Owed to Prospective Purchasers of Annuities who Are Age 65 and Over.

(a) These regulations are promulgated pursuant to the authority granted to the Insurance Commissioner pursuant to the provisions of Section 789.6(h) of the Insurance Code. These regulations shall apply to the issuance of all annuities.

(b) It is a breach of the duty of honesty, good faith and fair dealing owed a prospective insured, for an insurer to fail to take into account the interest of the prospective insured and give it at least as much consideration as it does to its own interest.

(c) In taking into account the interest of the prospective insured and giving that interest at least as much consideration as the insurer does to its own interest, the insurer must consider the prospective insured's circumstances, including, but not limited to:

1. the prospective insured's income
2. the prospective insured's age
3. the prospective insured's liquid net worth
4. the percentage of liquid net worth that the prospective insured's total expenditure to purchase the annuity will represent in relation to his/her total liquid net worth
5. the prospective insured's investment objectives
6. the prospective insured's health status, and
7. whether the prospective insured has funds, exclusive of the proposed annuity, sufficient to finance his or her health care needs, residential care, long-term care or other similar expenses.

(d) A breach of this duty of honesty, good faith, and fair dealing constitutes a violation of Article 6.3 of the California Insurance Code (California Insurance Code §785 et. seq.).

(e) For purposes of this article, Prospective Insured means purchasers, owners and/or annuitants where at least one of these is age 65 or over, excluding the issuance of an annuity where the purchaser is younger than age 65 and the annuitant is older than age 65, where those two persons are neither spouses nor registered domestic partners and where the money used to purchase the annuity was not given as a gift from the senior.

(f) At a minimum an insurer must, in order to perform its duty of good faith and fair dealing in issuing an annuity:

1. develop and maintain a set of written standards that will take into account at least the circumstances listed in subdivision (c) above,

2. train its agents and all others transacting on the use of these standards, and
3. require that its agents and others follow these standards.
The insurer shall make these standards available to the Commissioner upon request.

(g) The insurer is presumed to have violated the duty of good faith and fair dealing if the insurer issues an annuity to:

1. a prospective insured who, pursuant to the standardized actuarial tables, is unlikely to live through the surrender penalty period
2. a prospective insured who, pursuant to the standardized actuarial tables, is unlikely to be alive for X years after the policy annuitizes
3. a prospective insured without the insurer knowing that the prospective insured has funds, exclusive of the proposed annuity, sufficient to finance his or her health care needs, residential care, long-term care or other similar expenses
4. a prospective insured who has to cancel other existing policies in order to purchase the annuity policy at issue where the overall benefit of the policies/investments sold was greater than the overall value of the annuity purchase
5. a prospective insured for reasons of tax savings where no such savings resulted
6. a prospective insured when surrender charges may be imposed on the death of the annuitant
7. a prospective insured, when at the time of issuance, the annuity will more likely than not fail for any reason to confer significant financial benefit to the prospective insured
8. a prospective insured aged 65 or older when the annuity is a deferred annuity

(h) The insurer can rebut the presumption as set forth in subdivision (g) by presenting credible documentation that the prospective insured understood that, under the totality of circumstances, the issuance of the annuity was not in his/her best interest and yet still insisted on purchasing the annuity.

(i) It is not intended that these regulations conflict with or supersede any regulations or other law currently in force governing specific aspects of the sale or replacement of life insurance including, but not limited to, rules governing life insurance or annuity cost comparison indices, deceptive practices in the sale of life insurance or annuities, and replacement of life insurance policies or annuities. In the event of any such conflict, these regulations shall yield to prior existing law, but only to the extent of the conflict.

(j) If any provision of this article or the applicability thereof to any person or circumstance is held invalid by a court, the remainder of the regulations or the applicability of such provision to other persons or circumstances shall not be affected thereby.

Version B

California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Article 12.6
~~Life Insurance Yield Comparison Index and Net Payment Cost Comparison Index~~
Annuities Sales to Seniors:

Section 2546. ~~Authority~~. Duty of Good Faith and Fair Dealing Owed to Prospective Purchasers of Annuities who Are Age 65 and Over

(a) These regulations are promulgated pursuant to the authority granted to the Insurance Commissioner pursuant to the provisions of Section 789.6(h) of the Insurance Code. These regulations shall apply to the issuance of all annuities for which a person age 65 or older is the applicant, purchaser, annuitant or beneficiary.

(b) It is a breach of the duty of honesty, good faith and fair dealing owed a prospective insured, for an insurer to fail to take into account the interest of the prospective insured and give it at least as much consideration as it does to its own interest.

(c) In taking into account the interest of the prospective insured and giving that interest at least as much consideration as the insurer does to its own interest, the insurer shall consider the prospective insured's circumstances, including, but not limited to:

1. the prospective insured's income
2. the prospective insured's age
3. the prospective insured's liquid net worth
4. the percentage of liquid net worth that the prospective insured's total expenditure to purchase the annuity will represent in relation to his/her total liquid net worth
5. the prospective insured's investment objectives
6. the prospective insured's health, and
7. whether the prospective insured has funds, exclusive of the proposed annuity, sufficient to finance his or her health care needs, residential care, long-term care or other similar expenses.

(d) A breach of this duty of honesty, good faith, and fair dealing constitutes a violation of Article 6.3 of the California Insurance Code (California Insurance Code §785 et. seq.). An insurer will not have breached this duty if its determination to issue or decline is reasonably based on the relevant information the insurer knew or should have known at the time of that determination

(e) The insurer shall develop and maintain a set of written standards that will take into account at least the circumstances listed in subdivision (c) above. The insurer shall train its agents and all others transacting on the use of these standards and shall require that its agents and others follow these standards. The insurer shall make these standards available to the Commissioner upon request.

(f) For purposes of this article, Prospective Insured means applicants, purchasers, owners and/or annuitants where at least one of these is age 65 or over, excluding the issuance of an annuity where the purchaser is younger than age 65 and the annuitant is older than age 65 and where those two persons are neither spouses nor registered domestic partners and where the money used to purchase the annuity was not given as a gift from the senior.

(g) It is not intended that these regulations conflict with or supersede any regulations or other law currently in force governing specific aspects of the sale or replacement of life insurance including, but not limited to, rules governing life insurance or annuity cost comparison indices, deceptive practices in the sale of life insurance or annuities, and replacement of life insurance policies or annuities. In the event of any such conflict, these regulations shall yield to prior existing law, but only to the extent of the conflict.

(h) If any provision of this article or the applicability thereof to any person or circumstance is held invalid by a court, the remainder of the regulations or the applicability of such provision to other persons or circumstances shall not be affected thereby.